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***THE HONBLE Ms. JUSTICE G.ROHINI**

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+WRIT PETITION No.12777 OF 2004

%Dated 28-07-2004

Toddy Cooperative Society, Lingannapet Village, Ghambhiraopet Mandal, Karimnagar District, rep. by its President Pappanna Gari Chandra Goud,

S/o Venkata Goud, aged 36 years, Occ: Taper and President of Lingannapet Village, Ghambhiraopet Mandal, Karimnagar District.

PETITIONER

VERSUS

$ 1 The Superintendent of Prohibition and Excise, Karimnagar District, Karimnagar.
2 The Inspector of Prohibition and Excise, Yellareddypet Village and mandal, Karimnagar District.
3 The Commissioner of Prohibition and Excise, Government of Andhra Pradesh at Nampally, Hyderabad.

RESPONDENTS

! Counsel for Petitioner: Mr. B.SAIRAM GOUD

^Counsel for Respondents: G.P. for Prohibition & Excise

<GIST:

> HEAD NOTE:

? Cases referred

1984 (2) APLJ 1 (FB)

[2] 1993 ALT SUPP.(1) 209 (DB)

[3] 2002 (1) ALT 108 (DB)

[4] 2003 (2) ALT 549 (DB)

[5] 1998 (5) ALT 498 (DB)

[6] 1994 (3) ALT 17 (NRC)

[7] 1995 (1) ALD 164

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY EIGHTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

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WRIT PETITION NO : 12777 of 2004

Between:

Toddy Cooperative Society, Lingannapet Village, Ghambhiraopet Mandal, Karimnagar District, rep. by its President Pappanna Gari Chandra Goud,

S/o Venkata Goud, aged 36 years, Occ: Taper and President of Lingannapet Village, Ghambhiraopet Mandal, Karimnagar District.

..... PETITIONER

AND

1 The Superintendent of Prohibition and Excise, Karimnagar District, Karimnagar.
2 The Inspector of Prohibition and Excise, Yellareddypet Village and mandal, Karimnagar District.
3 The Commissioner of Prohibition and Excise, Government of Andhra Pradesh at Nampally, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the impugned proceedings of the 1st respondent vide proceedings Rc.No. 932/2004/P&E/A8, dt. 28-6-2004 in respect of Toddy Cooperative Society, Lingannapet Village, Ghambhiraopet Mandal, Karimnagar District, as illegal arbitrary and consequently direct the 1st respondent not to pass final order pending receipt of the Second Sample Bottle Report to the independent Lab named by the petitioner society.

Counsel for the Petitioner : MR.B.SAI RAM GOUD

Counsel for the Respondents : GP FOR PROHIBITION & EXCISE

The Court made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.12777 OF 2004

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ORDER :

The petitioner, a Toddy Cooperative Society at Lingannapet Village, Ghambheeraopet Mandal, Karimnagar District is holding a licence for sale of toddy which is valid upto 30-09-2004. This Writ Petition is filed challenging the proceedings of the Prohibition & Excise Superintendent, Karimnagar District, dated 28-06-2004 whereunder the licence of the petitioner Society has been suspended with immediate effect pending enquiry.

In the impugned proceedings, dated 28-06-2004, it is stated that on 10-01-2004 at about 5.30 pm the Assistant Prohibition & Excise Superintendent, AC Enforcement, Karimnagar inspected the petitioner Society and has drawn three samples of toddy under cover of panchnama. The said samples have been sent to Chemical Examiner, Warangal for analysis. As per the analysis report of the Chemical Examiner, Warangal, dated 31-05-2004, the toddy was found to be adulterated with Chloral Hydrate. Thus, the petitioner has contravened Rule 5 of A.P. Excise (Tapping of Trees and Toddy Shops Special Condition of Licence) Rules, 1969 (for short, 'the Rules') by indulging in adulteration of toddy with Chloral Hydrate which is injurious to public health. Keeping in view the public health and safety and with a view to restrain the Lincensee from indulging in such practice, the licence has been suspended for contravention of licence conditions under Section 31(1)(b) of the A.P. Excise Act (for short, 'the Act') with immediate effect pending enquiry. Simultaneously, the petitioner was also served with a show-cause notice calling upon to explain why the licence should not be cancelled. The petitioner

states that an explanation dated 19-07-2004 has already been submitted denying the allegation of adulteration of toddy and stating that the Excise Authorities never visited their shop. That apart, they also made a request for sending the second sample for analysis to an independent laboratory as per Rule 24 of the Rules as amended by G.O.Ms.No.880, Revenue (EX-II) Department, dated 22-08-1992.

In this writ petition, various grounds have been raised contending that there was no inspection as such on 10-01-2004 and that the case was foisted against the petitioners only for statistical purpose. It is also contended that since their request for sending the second sample to an independent laboratory for analysis is still pending, the impugned proceedings are arbitrary and illegal. The further contention is that the impugned order of suspension without affording any opportunity to the petitioner to explain the allegations, is contrary to law and violative of the principles of natural justice.

It is clear from the impugned proceedings that the licence was suspended pending enquiry on the basis of the analysis report of the chemical examiner stating that the sample of toddy drawn from the petitioner's licensed premises was found to be adulterated with Chloral Hydrate. It is not a final order and admittedly a show-cause notice has already been issued and enquiry is pending.

Section 31 of the Act which empowers the licensing authority to cancel or suspend the licence runs as under :

31. Power to cancel or suspend licence, etc:--

1. *Subject to such restrictions as may be prescribed, the authority granting any licence or permit under this Act may cancel or suspend it irrespective of the period to which the licence or permit relates;*

   a. *If any duty or fee payable by the holder thereof is not duly paid; or*

   b. *In the event of any breach by the holder thereof or by any of his servants or by any one acting on his behalf with his express or implied permission, of any of the terms and*

conditions thereof; or

c. *If the holder thereof or any of his servants or any one acting on his behalf with his express or implied permission, is convicted of any offence under this Act; or*

d. *If the holder thereof is convicted of any cognizable and non-bailable offence or of any offence under the Narcotics Drugs and Psychotropic Substances Act, 1985 or under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, or under the Trade and Merchandise Marks Act, 1958, or under Section 481, Section 482, Section 483, Section 484, Section 485, Section 486, Section 487, Section 488, or Section 489, of the Indian Penal Code or any offences punishable under Section 112 or Section 114 of the Customs Act, 1962 irrespective of the fact whether such conviction relates to the period earlier or subsequent to the grant of licence or permit; or*

e. *If the conditions of the licence or permit provide for such cancellation or suspension at will;*

Provided that no licence or permit shall be cancelled or suspended unless the holder thereof is given an opportunity of making his representation against the action proposed.

(2) …. …. …. …. …. … …. ….

(3) … … …. …. …. … …. ….

As can be seen, under Section 31 (1) (b), it is open to the licensing authority to cancel or suspend the licence in the event of any breach of any terms and conditions of the licence. There is no dispute about the fact that as per the conditions of the licence held by the petitioner the licence is subject to the special and general conditions relating to the sale of intoxicants and other Rules and Orders which are in force and also the Rules and Orders enforced after the issue of licence from time to time. The allegation against the petitioner is that as per the Chemical Analysis Report in respect of the samples drawn from petitioner's licensed premises, the petitioner is indulging in sale of adulterated toddy which is in contravention of Rule 5 of the Rules. Thus, the 1st respondent who is the licensing authority is competent to suspend or cancel the licence in exercise of the power conferred under Section 31(1) of the Act for contravention of Rule 5 of the Rules. The law is well settled that the power to suspend a licence pending enquiry is inherent and therefore

undoubtedly the impugned order of suspension is well within the power conferred under the Statute.

A Full Bench of this Court in TAPPERS CO-OPERATIVE SOCIETY, MADDUR Vs. SUPERINTENDENT OF EXCISE, has considered the nature and scope of the power under Section 31(1) of the Act and held that the licensing authority has got ancillary and incidental powers of suspending a licence or permit pending enquiry in a given case if the circumstances clearly warrant and taking into account the urgency in the case. The Full Bench further added that this incidental or ancillary powers cannot be exercised in a routine way or as a matter of course. The licensing authority is bound to exercise the discretion reasonably, bona fide and without negligence considering the circumstances of the case when such interim suspension is necessary. If it is possible to give an opportunity to the petitioner and the circumstances do not warrant such a drastic step, the licensing authority is bound to afford an opportunity and the power of suspension pending enquiry should not be exercised as an invariable rule or mode of making an enquiry. Further the suspension pending the enquiry should not be allowed to continue for an unduly long period. The authorities are bound to complete the enquiry as early as possible and any undue delay when it constitutes abuse of power makes the order liable to be set aside. Whether the suspension of licence must be preceded by notice or opportunity must depend upon various factors such as, degree of urgency involved, the duration of suspension, the nature of the breach, public danger to be avoided, and other similar circumstances which warrant an immediate action where it is not feasible or possible or even advisable to give an opportunity to the holders of the licences before passing interim orders of suspension.

In the case on hand, since the allegation is that the licensee is indulging in adulteration of Toddy with Chloral Hydrate, the consumption of which is injurious to public health, the respondents thought it fit to take immediate preventive action to stop the sales to the consumers so as to avoid further injury to public health and to conduct an enquiry against the petitioner. In view of the gravity of the allegation which involves public danger undoubtedly the situation warrants immediate action

and in my considered opinion the respondents are justified in suspending the licence pending enquiry.

Admittedly, a show-cause notice has already been issued. If the petitioner denies the inspection itself and claims the allegation of adulteration is without any basis, it is always open to the petitioner to participate in the enquiry and to produce the necessary evidence to substantiate its pleas. But, at this stage having regard to the allegation of adulteration which is based on the chemical analysis report, it cannot be said that the order of suspension pending enquiry is not bona fide.

So far as the requirement under Rule 24 of the A.P. Excise (Arrack and Toddy Licences General Conditions) Rules, 1969 (hereinafter referred to as 'the Rules') for sending the second sample for analysis to an independent laboratory, the learned Counsel cited the decision of a Division Bench of this Court in USHANNA GOUD Vs. COMMISSIONER OF EXCISE wherein it was held that the portion of Rule 24 attaching finality to the certificate issued by the Chemical Examiner for Excise Department offends the Rule of fair play and is arbitrary and unreasonable and is a glaring infraction of the fundamental rights guaranteed under Articles 14 and 21 of the Constitution of India. The said decision was rendered on 02-04-1992. Thereafter, Rule 24 of the Rules has been amended by G.O.Ms.No.880, Revenue (EX.II) Department, dated 22-08-1992, according to which if the licensee desires that one of the samples should be sent for analysis to an independent laboratory, he may apply to the Excise Superintendent within three days of the drawl of the samples and in case where the licensee or his noukernama-holder was not present at the time of taking sample, the licensee should apply within seven days. On receipt of such application, the concerned officer is bound to request the Court to send the sample to an independent laboratory chosen by the licensee.

The petitioner states that they have already made such a request on 19-07-2004. It is stated that since the petitioner came to know the alleged inspection only on receipt of show cause notice on 16-07-2004, the request under Rule 24 for sending the sample for analysis to an independent laboratory has been made within 7 days from the date of their knowledge. It is not the case of the petitioner that the

respondents failed to consider its request for sending the second sample for analysis to an independent laboratory as per Rule 24 of the Rules. Therefore, it is not necessary to go into the said issue at this stage and it is left open to the respondents to consider the request of the petitioner and to take the necessary action in accordance with law if the same is found to be in terms of Rule 24 of the Rules.

However, the learned Counsel for the petitioner mainly contended that the impugned order of suspension which was issued without prior notice to the petitioner is arbitrary and illegal and violative of principles of natural justice.

In support of his contention, the learned Counsel for the petitioner placed reliance upon the two decisions of the Division Bench in K.SRINIVASA REDDY Vs. SUPERINTENDENT, PROHIBITION AND EXCISE and GOKA BUJJAMMA Vs. PROHIBITION AND EXCISE SUPERINTENDENT, SRIKAKULAM. The learned Counsel vehemently contended that while exercising the power under Section 31 (1) (e) of the A.P. Excise Act, the respondents are bound to give an opportunity to the holder of the licence to make his representation against the action proposed.

Therefore, the question that arises for consideration is whether it is open to the Licensing Authority to suspend the licence pending enquiry without issuing any prior notice to the licensee. It is true that the proviso to sub-section (1) of Section 31 states that no licence or permit shall be cancelled or suspended unless the holder of licence is given an opportunity of making his representation against the proposed action. However, on a plain reading of Section 31 (1) together with the proviso, I am of the view that the suspension referred to in the said provision is only with regard to suspension of licences by way of punishment, but not suspension as an interim measure pending enquiry into the allegations against the licensee.

Precisely, the same question fell for consideration by the Full Bench in TAPPERS CO-OPERATIVE SOCIETY's case (1 supra). SRI K.MADHAVA REDDY, C.J. (as he then was) who has dissented from the majority opinion

expressed that the licence even pending enquiry can be suspended only upon a finding that the licensee has contravened the conditions of licence which finding must be arrived at after giving the licensee an opportunity of being heard. However it has been held per majority by SRI P.KODANDA RAMAIAH AND SRI A.LAKSHMANA RAO, JJ as under :

> "*The power of suspension which is concomitant or adjunct is no doubt restricted by the statutory provision under the proviso in question to pass final orders of suspension but that power cannot be said to have been taken away to pass an interim order of suspension not intended to be a penalty but only interim measure to pass effective orders. This conclusion of ours applies with greater force when we notice that we are concerned with the liquor licences in which the citizen has no right guaranteed under Art. 19 (1) (g) of the Constitution of India but only a privilege. No doubt once a licence is granted valuable right would accrue to him and that can be taken away as per the provisions of the Act. But as a rule of construction the proviso cannot have a larger affect than it intended to govern the final disciplinary proceedings of suspending or cancelling a licence or permit."*

In SUPERINTENDENT, PROHIBITION AND EXCISE Vs. KRISHNA WINES, a Division Bench of this Court while referring to the above decision of the Full Bench and other relevant decided cases held as under :

> *"It is now well settled that doctrine of natural justice if embodied in the statute ought to be given its true and proper meaning, and one need not give it restrictive meaning, but the entire text of the statute shall have to be looked into for the purpose of attributing a proper meaning. Section 31, therefore, encompasses to severable elements, the first being the power inherent and the second being the power as prescribed.* In the event of there being an order of suspension simpliciter, *question of invocation of the second element, does not and cannot arise, but in the event, however, the order of suspension partakes the character of a penalty, then and in that event, question of reading into the statute the first element does arise."*

Another Division Bench in ASSISTANT COMISSIONER OF PROHIBITION AND EXCISE / PROHIBITION AND EXCISE SUPERINTENDENT, R.R. DISTRICT AND OTHERS Vs. M/s. JAYADEEP WINES, GADDIANNARAM in W.A.No.877 and 878 of 1998, dated 01-06-1998 also expressed a similar opinion as under:

> *"It is now well settled that the power to suspend a licence pending enquiry is inherent and therefore if the order is in the nature of an interim order, the principles of natural justice need not be complied with unless the order is in the nature of a penalty or a final order on a perusal of the order, we are of the view that the impugned order is in the nature of an interim order and therefore in exercise of the inherent power, the authorities are competent to suspend the licences."*

In W.A.No.1119 of 1994, dated 29-09-1994 {M/S.MADHAVI WINES, MANCHERIAL Vs. EXCISE SUPERINTENDENT}, it has been held by the Division Bench that only where suspension is resorted to as a substantive punishment an opportunity of hearing has to be given to the person whose licence is proposed to be suspended.

Even in SREEDEVI WINES Vs. DEPUTY COMMISSIONER OF EXCISE, KAKINADA & OTHERS, upon which the learned Counsel for the petitioner relied upon, it was held that opportunity is mandatory if it is a final order of suspension.

That being the settled legal position, I do not find any merit in the contention of the petitioner that the impugned order is bad for want of prior notice.

In K.SRINIVASA REDDY's case (3 supra), the Division Bench found that the order impugned reads as if it is a final order under Section 31(1) and therefore held it was illegal and against the provisions of Section 31(1) of the Act since the licensee was not issued a prior notice. Similar view has been expressed in GOKA BUJJAMMA's case (4 supra). In both the said cases, the decision of the Full Bench in TAPPERS CO-OPERATIVE SOCIETY's case (1 supra) was not brought to the notice of the Division Bench. Hence, the said decisions relied on by the learned Counsel for the petitioner are distinguishable and not applicable to the case on hand.

Having regard to the facts and circumstances of the case, the relief as prayed for cannot be granted. Accordingly, the Writ Petition is disposed of with a direction to the respondents to complete the enquiry as expeditiously as possible preferably

within a period of four weeks from the date of receipt of this order. It is also made clear that the respondents shall not record any adverse finding against the petitioner in the enquiry without looking into the chemical analysis report from the independent laboratory if the petitioner's request under Rule 24 is found to be in accordance with law.

The Writ Petition is accordingly disposed of. No costs.

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28th July, 2004.

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Note:-

Furnish C.C. in 3 days.

(B/O)

gbs

Note:-

L.R. Copy to be marked.

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To

1 The Superintendent of Prohibition and Excise, Karimnagar District, Karimnagar.
2 The Inspector of Prohibition and Excise, Yellareddypet Village and mandal, Karimnagar District.
3 The Commissioner of Prohibition and Excise, Government of Andhra Pradesh at Nampally, Hyderabad.

4. 2 CCs to GP for Prohibition & Excise, High Court Bldgs, Hyderabad. (OUT).

5. Two CD copies.

6. 8 LR copies.

7. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.

8.The Secretary, A.P. Advocates' Association Library,

High Court Buildings, Hyderabad.